STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: IES UTILITIES INC.	DOCKET NO. RPU-90-7

ORDER DIRECTING CREDITING OF FORMER MANUFACTURED GAS PLANT INSURANCE RECOVERIES

(Issued February 21, 2001)

On April 30, 1991, the Utilities Board (Board) issued its "Final Decision And Order" in the Iowa Electric Light and Power Company, n/k/a IES Utilities Inc. (IES), rate case proceeding indentified as Docket No. RPU-90-7. In that decision, the Board allowed IES to recover an amount for the cost of environmental clean-up of former manufactured gas plant (FMGP) sites. In the April 30, 1991, order the Board stated, in part, that since it was reasonable for ratepayers to absorb a portion of the cost of environmental clean-up through rates, it was also reasonable that at least some portion of any third-party recovery for the environmental clean-up from insurance companies should offset ratepayer expenses. The Board went on to state that it believed a sharing of the third-party recoveries between ratepayers and shareholders was appropriate and that IES should keep an accumulative record of the clean-up costs. IES indicated that it had 101 general comprehensive insurance policies under which it planned to pursue recovery.

The Board, on October 16, 1998, issued an order directing IES to file a report that showed all insurance recoveries, amounts recovered through rates, amounts

expended on clean-up efforts, and amounts projected to be spent on remediation in the future. IES filed its report on December 8, 1998, and indicated that it would be concluding an extensive study of all FMGP sites by the end of 1998. The Board issued an order on February 17, 1999, directing IES to file a summary detailing the accelerated clean-up program and associated expenditures. On March 30, 1999, IES filed the summary.

On December 29, 2000, the Board issued an order directing the parties to file simultaneous briefs on two issues to address the disposition of the FMGP insurance recoveries. The first issue was, "Does the Utilities Board have statutory authority to order refunds of the insurance recoveries held by IES Utilities Inc.?" The second issue was "If the Utilities Board is found to have the authority to order the refunds, should the insurance recoveries be refunded to customers or should they be retained for accelerated remediation by IES Utilities Inc?" IES and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed briefs addressing the two issues.

In the December 29, 2000, order the Board directed the parties to inform the Board if there were issues of material fact that needed to be addressed by an evidentiary hearing. The parties did not indicate the need for an evidentiary hearing.

THE BOARD'S AUTHORITY

In its brief, Consumer Advocate takes the position generally that the Board has the authority to order "refunds" of the insurance recoveries under the Board's general broad authority in Iowa Code § 476.2(1). That statutory provision states that, "The

board shall have broad general powers to effect the purposes of this chapter not withstanding the fact that certain specific powers are hereinafter set forth."

Consumer Advocate states that Iowa Code Chapter 476 was promulgated to protect consumers in Iowa by authorizing the Board to set just, reasonable, and nondiscriminatory rates. Consumer Advocate describes the proceedings where the just, reasonable, and nondiscriminatory rates are set and stated that the Board issues an order in those proceedings and parties may appeal the decision.

Consumer Advocate then points out that three issues involving the FMGP sites were litigated in Docket No. RPU-90-7. The issues were: 1) the appropriate treatment for ratemaking purposes of the costs associated with clean-up of former manufactured gas plant sites; 2) whether to allow IES to account for the clean-up costs using deferred accounting; and 3) how any third party insurance recoveries should be handled. The Board then issued its decision allowing the recovery in rates of clean-up costs and found that there should be an offset of any insurance recoveries. Consumer Advocate admits that the Board did not order the offset, but argues that it did reserve the right to order the offset if IES recovered monies from the insurance policies.

Consumer Advocate argues that IES had an opportunity to appeal the Board's decision but chose not to do so. Consumer Advocate contends that IES is precluded now from contesting the offset and that it received the benefit of the ratemaking treatment of the clean-up costs. Part of that treatment was that any insurance recoveries would be returned to ratepayers and Consumer Advocate asserts that the Board's authority to order an offset is consistent with the authority to set just and

reasonable rates. The Board's order specifically retains jurisdiction over any recoveries.

IES takes the opposite position of Consumer Advocate. IES contends generally that the Board only had authority over the offset of any insurance recoveries until the issuance of the April 30, 1991, final order in Docket No. RPU-90-7. IES contends that outside of a rate proceeding the Board only has authority to make "refunds" in three instances, none of which exist in this case. First, there are no temporary rates in effect, Iowa Code § 476.6(13). Second, there is no overcollection of fees, Iowa Code § 476.3. Third, the insurance recoveries are not the result of federal law or refund, Iowa Code § 476.6(14).

IES goes on to discuss several cases involving refunds and retroactive ratemaking. IES cites an Iowa Supreme Court case involving customer overcharges where the court ruled that the Board was compelled to order the refunds. Mid-Iowa Community Action v. Iowa State Commerce Commission, 421 N.W. 2d 899 (Iowa 1988). IES states that the instant case does not involve an overcharge.

IES then at length discusses the filed rate doctrine and retroactive ratemaking. IES argues that the Board would violate both doctrines if it ordered a "refund" of the insurance recoveries. IES then asserts that the Board only has that statutory authority specifically provided by the Iowa Code and there are no statutory provisions, which authorize the "refunding" of the insurance recoveries. IES also asserts that the Board's final order of April 30, 1991, did not contemplate a "refund" of the recoveries prior to the completion of the clean-up activities. IES quotes the Board's order, which will be set out below.

In its April 30,1991, order, the Board stated that a representative amount for expenses associated with the clean-up of FMGP sites were included in rates by an order issued June 15, 1990, in Docket No. RPU-89-3. In Docket No. RPU-90-7, the Board denied inclusion in rates of underrecoveries from Docket No. RPU-89-3, allowed IES (then Iowa Electric Light and Power Company) to include $3,353,546 annually in rates for clean-up costs, and discussed the treatment of recovery of insurance monies. The Board stated:

> Since the Board has determined that it is reasonable for ratepayers to absorb a portion of the cost of environmental clean-up through rates, it is also reasonable that at least some portion of any third-party recovery for the environmental clean-up from insurance companies should offset ratepayer expenses. The Board believes Iowa Electric should be given an incentive to pursue actively third–party recoveries of its former manufactured gas plant clean-up costs. In order to accomplish that goal, the Board believes a sharing of those third-party recoveries between ratepayers and shareholders is appropriate when, and if, such recoveries from third parties are secured. Thus, the Board will direct Iowa Electric to keep a cumulative record of its recovery of clean-up costs from ratepayers. The ratio of recovery to total clean-up expenditures could then be used to determine the appropriate sharing of any third-party recoveries. For example if Iowa Electric incurs $20 million totally in clean-up costs over the entire period, but recovers only $12 million in rates to cover these expenses, then 60 percent of any third-party recoveries should be returned to ratepayers and 40 percent should be retained by Iowa Electric. The starting point for this analysis should be the effective date of final rates in Iowa Electric's last gas rate case, Docket No. RPU-89-3, since that is when Iowa Electric began collecting former manufactured gas plant clean-up costs in rates. The Board would not intend for Iowa Electric to use a unit factor to determine the recovery from ratepayers. Instead, Iowa Electric would account for recoveries under the assumption that it either has or will annually recover the representative amount set in Docket No. RPU-89-3 or in this case, according to the periods of

> time those rates are in effect. This would mean that there would be three different representative amounts used in the determination of ratepayer recovery: 1) final rates for Docket No. RPU-89-3; 2) temporary rates for this case; and 3) final rates for this case.
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> This approach would give Iowa Electric the opportunity to recoup some of its claimed past underrecoveries, provide a strong incentive to pursue actively third-party reimbursement, and return to the ratepayers the portion of costs underwritten by them. This approach is not intended to bind a future Board, but it is offered as the intent of the current Board members and a suggestion for future Board members.

The Board finds that the insurance recoveries are not associated with temporary rates, overcharges, or a federal refund. The issue before the Board is whether the Board has jurisdiction over the insurance recoveries under its general statutory ratemaking authority in Iowa Code § 476.2(1).

The Board's general authority is simply stated as "The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided." The Board is then given, under § 476.2(1), "broad general powers to effect the purposes" of Chapter 476. The main purpose of the statute is to ensure that utilities are providing safe and adequate service at just, reasonable, and nondiscriminatory rates. The Board has wide discretion in fulfilling that purpose.

The Board finds that it has jurisdiction over the insurance recoveries under its general ratemaking authority. The Board took jurisdiction over the insurance recoveries as an issue in the development of just and reasonable rates in Docket No. RPU-90-7. In that proceeding the Board made findings of fact regarding the inclusion

in rates of expenses for the clean-up of the FMGP sites, and as part of that decision the Board found "it is also reasonable that at least some portion of any third-party recovery for the environmental clean-up from insurance companies should offset rate payer expenses." The Board then stated again at the end of the discussion of the issue that this approach would provide an opportunity to recoup some claimed past underrecoveries, provide an incentive to pursue third-party reimbursement, and "return to ratepayers the portion of costs underwritten by them." The Board's decision that the insurance recoveries were part of the establishment of just and reasonable rates is supported by the extensive analysis of how the recoveries were to be treated.

These findings show that the Board set rates in Docket No. RPU-90-7 based upon an offset of insurance recoveries against the clean-up costs included in those rates. IES did not appeal the ratemaking treatment determined by the Board in its final order. The Board finds that it is unfair and inequitable for IES to now suggest that the Board does not have the authority to offset the rates from Docket No. RPU-90-7 with the insurance recoveries when it did not appeal that decision. IES has had the benefit of the revenue from the rates since 1991 and now also wants the benefit of the insurance recoveries. The Board finds further that there is no indication that the Board thought the offset should wait until the clean-up was completed. The Board's order indicates that the ratepayers should have the benefit of the offset when the recoveries were received by IES.

USE OF PROCEEDS

Consumer Advocate's position concerning the use of the insurance proceeds is that the recoveries should be returned to the ratepayers, unless there is an accelerated remediation plan that contains the protections similar to those in the settlement agreement in Docket No. RPU-91-5, approved for MidAmerican Energy Company (MidAmerican) by the Board on October 16, 2000.

IES takes the position that the insurance recoveries should be used to accelerate its clean-up of the FMGP sites. IES states in the brief that it had filed a detailed description of an accelerated plan on March 31, 1999, and its proposed Asset Management Approach is similar to the settlement agreement in Docket No. RPU-91-5.

The Board has addressed the issue of the treatment of insurance recoveries from FMGP sites in at least three other dockets. In Docket No. DRU-95-3, the Board ordered the return to ratepayers of 90 percent of the recoveries and allowed the utility to retain 10 percent. In Docket No. RFU-94-2, the Board also ordered the 90/10 split. Docket Nos. RFU-94-2 and DRU-95-3 involved Midwest Gas, a division of Midwest Power Systems Inc. (Midwest Gas), the predecessor to MidAmerican.

The issue of single-issue ratemaking was raised in Docket No. RFU-94-2, but the parties agreed that even if it violated that concept, the return of the insurance proceeds would be an exception. In that docket the Board did not address the merits of the single-issue ratemaking argument. In addressing the disposition of the proceeds, the Board found that a ratio sharing as suggested in the final order in Docket No. RPU-91-5 was not workable and a 90/10 sharing would ensure that

ratepayers received the benefits of the recoveries. In an order on rehearing the Board found that the credit to ratepayers should be made immediately and that the decision was limited to the facts in that case.

Midwest Gas then filed for a declaratory ruling in Docket No. DRU-95-3 because of a subsequent recovery. Midwest Gas took the position in the declaratory ruling request that it should be allowed to retain the recovery because the liability for the site was retained by Enron Corporation. The Board found that the facts did not distinguish the recovery from the one in Docket No. RFU-94-2. The Board ordered the company to credit customers bills for the recovery plus interest.

In Docket No. RPU-91-5, the Board allowed MidAmerican to retain the insurance recoveries for accelerated remediation. The Board decision, which was issued on October 16, 2000, approved a stipulation between MidAmerican and Consumer Advocate and approved an accelerated remediation plan filed by MidAmerican.

The settlement contained concessions and safeguards negotiated by Consumer Advocate. Those safeguards and concessions are set out below and are compared to the information concerning IES' Asset Management Approach.

1. MIDAMERICAN: Assurance to spend the $4.3 million from ratepayers first before it spends recoveries on accelerated remediation.

   IES: Spend $4.6 million from ratepayers, then increase it to $6 million using insurance recoveries. Supplied projections out to the year 2008 that total $26 million. Qualifies accelerated proposal by stating that it must check with Iowa Department of Natural Resources (IDNR) to see if IDNR is capable of handling the accelerated activity.

2. MIDAMERICAN: All money received from insurance recoveries shall be used for accelerated remediation. A guarantee that the insurance recovery monies will not be used to replace ratepayer expenditures.

   IES: No specific assurance.

3. MIDAMERICAN: Will file a plan detailing proposed threshold and expedited activity for each year. Will file semi-annual report to Board showing the level of remediation, separated between normal and expedited.

   IES: Stated it would submit an updated liability estimate annually for Board review, but did not file one in 1999 or 2000.

4. MIDAMERICAN: Will file with the Board and Consumer Advocate until 2007 data supporting all pro forma rate case expenses, annualized, for gas operations.

   IES: No commitment.

5. MIDAMERICAN: Estimates future liabilities of approximately $28 million.

   IES: Shows expenditures of $26 million through 2008.

6. MIDAMERICAN: Has 26 sites. Provided plan showing what sites would be accelerated. The clean-up would be accelerated by 1-3 years at each site.

   IES: Has no definite schedule for acceleration. Stated it depends on the ability of the IDNR to effectively manage the accelerated schedule.

7. MIDAMERICAN: The amount of the insurance recoveries and what would have been the credit to ratepayers is confidential.

   IES: The amount of the insurance recoveries and the potential credit to ratepayers is confidential.

The Board finds that the insurance recoveries should be returned to the ratepayers as decided by the Board in the final order issued in 1991. The Board clearly states in the final order that the rates which were found to be just and reasonable were set with the consideration that any recoveries would be offset against the clean-up costs included in rates. The Board followed this approach in two

cases involving MidAmerican (Midwest Gas) and did not follow it in October 2000 because of a settlement agreement between MidAmerican and Consumer Advocate. The settlement agreement had safeguards negotiated by Consumer Advocate that are not present in the accelerated plan filed by IES. MidAmerican provided a detailed plan for accelerating remediation at specific sites on a specific time line and Consumer Advocate negotiated certain regulatory concessions.

In this case there is no settlement and there is no specific plan for accelerating remediation at specific sites on a specific time line. Additionally, there are no concessions. Without these three factors the retention of the recoveries by IES would be a windfall to the company, without any accountability. Ratepayers have been and will continue to fund the clean-up and should receive the benefit of the recoveries.

The Board finds that there should be a sharing of the recoveries even though IES states that it does not want to share. The sharing approved in prior similar dockets was 90 percent to ratepayers and 10 percent to the company. The Board finds that the same percentage of sharing between ratepayers and IES is reasonable in this instance. The actual amount of insurance recoveries is considered confidential, but the amount to be credited to customers is significant although it will not recover the entire amount that ratepayers have paid toward the environmental clean-up. The ratepayers as of December 1998 are providing $4.6 million per year for remediation. Return of the recoveries to the ratepayers is consistent with the ratemaking treatment established by the Board.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. IES Utilities Inc. shall credit 90 percent of the total insurance recoveries plus interest from the insurance recoveries for the former manufactured gas plant sites.

2. On or before March 16, 2001, IES Utilities Inc. shall file a report showing the total insurance recoveries plus interest and proposed tariffs refunding 90 percent of the total as a bill credit or check to customers.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 21st day of February, 2001.